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OFFICE OF MANAGEMENT AND BUDGET
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ADMINISTRATOR
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INFORMATION AND
REGULATORY
AFFAIRS

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MEMORANDUM FOR: REGULATORY POLICY OFFICERS AND MANAGING AND
EXECUTIVE DIRECTORS OF FEDERAL AGENCIES

FROM: Neomi Rao, Administrator *Neomi Rao*
Office of Information and Regulatory Affairs

SUBJECT: Data Call for the Fall 2018 Regulatory Plan,
Fall 2018 Unified Agenda of Federal Regulatory and Deregulatory
Actions, and FY 2019 Regulatory Cost Allowances

Regulatory reform is a key priority of this Administration, which continues to focus on the reduction of unnecessary regulatory costs across all Federal agencies. Implementation of these priorities requires Federal agencies to coordinate and provide advance notice of their regulatory activities. This Data Call requests from all Federal agencies information for compilation of the Fall 2018 Regulatory Plan (Plan) and the Unified Agenda of Federal Regulatory and Deregulatory Actions (Agenda).¹ Pursuant to longstanding requirements, the Plan and Agenda provide important public notice and transparency about proposed regulatory and deregulatory actions across the Federal Government. This process highlights agency priorities, promotes planning and coordination, and encourages public participation in the regulatory process.

For Executive Branch agencies, this Data Call also requests proposed Fiscal Year 2019 regulatory cost allowances pursuant to Executive Order (EO) 13771, "Reducing Regulation and Controlling Regulatory Costs."² The Office of Information and Regulatory Affairs (OIRA) will work with agencies to establish their cost allowances for FY 2019 based on agency submissions. A new EO 13771 ROCIS module will be available in July, allowing agencies to submit proposed cost allowances for FY 2019 as well as complete final accounting for FY 2018 using the ROCIS system. OIRA will provide additional reference materials and a webinar on the new module in July.

¹ Additional guidance regarding preparation and submission of the Regulatory Plan and Unified Agenda is available on www.rocis.gov.

² Exec. Order No. 13,771, 82 Fed. Reg. 9339 (Feb. 3, 2017) (signed Jan. 30, 2017). ("No regulations exceeding the agency's total incremental cost allowance will be permitted in that fiscal year, unless required by law or approved in writing by the Director."). OMB Guidance currently does not apply EO 13771 to the traditionally independent agencies.

Important Dates

July 27, 2018

- Fall 2018 Regulatory Plan and Agenda submissions are due;
- Deadline to start EO 12866 and/or EO 13771 review for rules to be completed in FY 2018; and
- FY 2019 proposed EO 13771 cost allowance submission is due.

August 31, 2018

- FY 2018 provisional EO 13771 accounting submission is due.

October 1, 2018

- FY 2018 final year-end EO 13771 accounting submission is due.

More information on these deadlines is provided below.

Priorities for the Regulatory Plan and Unified Agenda

Publication of the Plan and Agenda represent a key component of a longstanding regulatory planning mechanism under EO 12866, “Regulatory Planning and Review.”³ The Plan and Agenda should reflect policy initiatives consistent with Administration priorities for regulatory reform, as well as specific actions that will support those initiatives. These might include:

- *Reducing regulatory costs.* The Administration has focused on the reduction of regulatory costs through the repeal and modification of duplicative, outdated, and ineffective regulations.
- *Using the Agenda to provide public notice.* The Agenda should reflect only current regulatory policy for the Administration – actions agencies reasonably expect to complete within the next twelve months. Agencies should remove actions that do not reflect current policy. Please closely review all longstanding actions, with a presumption to remove any actions that have been on the Agenda for more than four years. Agencies should also closely evaluate actions on the Inactive List and determine whether they reflect current policy or should be removed altogether.
- *Transparency.* Agencies should provide the public with the means to track regulatory policy from beginning to end. For example, agencies must publish and assign “regulatory identification numbers” (RINs) to all anticipated regulatory and deregulatory rulemakings.
- *Consistent practice across the Federal Government.* All Federal agencies, including traditionally independent agencies and commissions, are strongly encouraged to implement the above policy priorities.

Agencies should be prepared to brief OIRA on their anticipated regulatory reform priorities.

³ Exec. Order No. 12,866, 58 Fed. Reg. 51735 (Oct. 4, 1993) (signed Sept. 30, 1993).

Improving the Regulatory Plan and Unified Agenda

The Regulatory Plan – In light of the importance of regulatory reform in this Administration, the narrative in the Regulatory Plan should reflect the priorities of the agency head. The Plan provides an opportunity for sharing with the public an agency’s goals with respect to regulatory policy. As appropriate, agencies should consider including the following in their Plans:

- Regulatory and deregulatory priorities, including recent legislative and programmatic activities.
- The aggregate number of anticipated regulatory and deregulatory regulations in the Agenda, as well as categories of anticipated deregulatory actions, such as the repeal of guidance documents or streamlining of paperwork burdens that do not appear in the Agenda.
- Rulemakings that streamline existing regulations and reduce unjustified burdens.
- Rulemakings expected to have large net benefits.
- Rulemakings that promote open government and use disclosure as a regulatory tool.
- Rulemakings of particular interest to small business. Please discuss these regulations in a separate section of the introductory narrative.

The Unified Agenda – The Unified Agenda provides a comprehensive list of anticipated regulatory and deregulatory actions. The utility of the Agenda depends on having up-to-date entries that reflect immediate agency priorities. In addition to removing items that no longer reflect agency priorities, the following are suggested steps an agency can take to improve the quality of the Agenda:

- *Informative abstracts.* Abstracts should include the reason for developing the rulemaking. Entries with outdated information, or abstracts that merely repeat the title, timetable, or legal authority, detract from the usefulness of the Agenda.
- *Accurate timing.* The public relies on agency projections of timing for meaningful participation in the regulatory process. Please take all reasonable steps to ensure the accuracy of timetable information.
- *Consistency across entries.* Each agency should coordinate designations and ensure that responses for priority, EO 13771 designation, major status under the Congressional Review Act, unfunded mandates, federalism, and government levels affected (State, local, tribal, or Federal) are consistent within the agency.
- *Accessibility.* To help promote accessibility of the Agenda, agencies should provide, when available, URLs of websites with more information about a rulemaking.
- *Streamlining the Agenda.* Agencies should review Agenda entries marked “Routine and Frequent” or “Informational/Administrative/Other” and evaluate whether these entries are categorized correctly and meet the criteria for inclusion in the Unified Agenda under EO 12866.

Preparing and Transmitting the Regulatory Plan and Unified Agenda

The instruction documents for submitting the Regulatory Plan and Unified Agenda are available on the [ROCIS homepage](#). These documents identify the materials agencies will need and explain in detail how to prepare agency submissions for the Plan and Agenda. Please follow the procedures carefully and be sure to include all required documents with the submissions. Agencies should direct any questions regarding submissions to their OIRA desk officer. For information concerning automated production, information requirements, format, or submission of materials, contact the Regulatory Information Service Center (RISC) at (202) 482-7340.

Consistent with prior practice, the complete Plan and Agenda will be published online at www.reginfo.gov.⁴

All Regulatory Plan, Unified Agenda, and EO 13771 proposed cost allowances are due by **July 27, 2018**.

Compliance with EO 13771

In agency submissions for the Agenda, please give particular attention to EO 13771 and OIRA's "Guidance Implementing Executive Order 13771."⁵ Consistent with these principles, agency submissions should adhere to the following EO 13771 requirements to the extent permitted by law:

- *Regulatory Plan.* For its Regulatory Plan, an agency should summarize regulatory and deregulatory priorities. The Plan should provide an agency's aggregate number of anticipated regulatory and deregulatory actions and incorporate by reference the itemized actions in the Agenda.
- *Unified Agenda.* The Agenda should demonstrate compliance with EO 13771, as an agency anticipates the number of deregulatory and regulatory actions over the next fiscal year. Specifically, the Agenda should reflect through the end of FY 2019 at least two deregulatory actions taken for each regulatory action (except items not typically included in the Agenda). Preliminary EO 13771 designations are required for each action submitted in the Agenda (see part 3 of the [guidelines](#) for more detail).
- *Regulations must be on the Agenda.* As required by EO 13771, agencies should not issue significant regulations that have not been included in the most recent version or update of the Agenda, unless otherwise required by law or approved in advance in writing by the Director of the Office of Management and Budget (OMB). This requirement applies to all significant regulatory actions, both proposed and final. If an agency plans to issue regulations that were not in the most recent Agenda, they will need to request a waiver. More information on this process can be found in the OIRA Memorandum, "Compliance with Section 3(c) of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs" (February 22, 2018).

⁴ A subset of Agenda entries is also published in the Federal Register, in accordance with the publication requirements of the Regulatory Flexibility Act, 5 U.S.C. § 602.

⁵ Office of Mgmt. & Budget, Memorandum No. M-17-21, "Guidance Implementing Executive Order 13771" (Apr. 5, 2017).

Proposed Cost Allowance Submissions under EO 13771 for Fiscal Year 2019

Section 3(d) of EO 13771 provides that the Director of OMB shall identify a regulatory cost allowance for each agency for FY 2019. The Order further provides that “[n]o regulations exceeding the agency’s total incremental cost allowance will be permitted in that fiscal year, unless required by law or approved in writing by the Director.”

In addition to Unified Agenda preparations, Executive departments and agencies are directed to prepare a proposed total incremental cost allowance for FY 2019 to inform the Director’s determinations under Section 3(d) of EO 13771. Each agency’s proposed FY 2019 cost allowance should be informed by its submissions for the Fall 2018 Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions. Each agency should include along with its proposed FY 2019 cost allowance an explanation of how the agency developed its proposed allowance and how that proposed allowance is consistent with the Administration’s regulatory policies and priorities established in EO 13771, as well as EO 13777 “Enforcing the Regulatory Reform Agenda.”⁶

OIRA will review each agency’s proposed FY 2019 cost allowance for consistency with the regulatory policies and priorities set forth in EOs 13771 and 13777, including the goal “to lower regulatory burdens on the American People by implementing and enforcing regulatory reform.” EO 13777 also explains that “[i]t is the policy of the United States to alleviate unnecessary regulatory burdens placed on the American people.” Finally, EO 13771 provides that this Administration’s policy is “to be prudent and financially responsible in the expenditure of funds, from both public and private sources.”

In light of these policies, OIRA expects that each agency will propose a net reduction in total incremental regulatory costs for FY 2019. OIRA expects to publish each agency’s final total incremental cost allowances in conjunction with the 2018 Fall Regulatory Plan and Agenda.

By July 27, 2018, please submit the proposed total incremental cost allowance for FY 2019 via the new EO 13771 module in www.rocis.gov, along with any supporting explanation, at the same time as submissions for the Fall 2017 Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions.

Final Accounting under EO 13771 for Fiscal Year 2018

Along with the Regulatory Plan and Unified Agenda, OIRA will publish the results of agency compliance with EO 13771 in FY 2018. This will include a list of completed deregulatory and regulatory actions by agency, as well as regulatory costs and cost savings by agency. OIRA will also report the numbers of deregulatory and regulatory actions and total cost savings achieved across Executive Branch agencies.

⁶ Exec. Order No. 13,777, 82 FR 12285 (Mar. 1, 2017) (signed Feb. 24, 2017).

For actions agencies wish to complete and publish before the end of FY 2018, to the extent feasible and consistent with this Administration's priorities, statutory obligations, and judicial deadlines, please submit any priority rulemakings to OMB for EO 12866 review by **July 27, 2018**. Timely submission will ensure sufficient time is available for review and publication by the end of the fiscal year.

Each agency should provide its accounting of deregulatory and regulatory actions and total regulatory cost savings in two parts: (1) Provide a provisional accounting of all actions completed during the first eleven months of the fiscal year (November 1, 2017, through August 31, 2018) by **August 31, 2018**, and (2) Provide a final year-end accounting **no later than October 1, 2018**.

OIRA encourages agencies to submit final year-end accounting as close as possible to publication of the agency's last final action of FY 2018. For example, agencies that do not plan to issue any final actions in September may wish to submit their year-end accounting on August 31, 2018. OIRA will take the provisional accounting submissions into account when considering the final cost allowance proposals for FY 2019.